



Office of the Attorney General

State of Texas

April 29, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Holman Liliensern
Holman Liliensern, P.C.
P. O. Drawer 2789
Texas City, Texas 77592-2789

OR92-179

Dear Mr. Liliensern:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15394.

The Texas City Independent School District (the "school district"), which you represent, has received a request for information relating to a classroom incident that occurred on January 30, 1992, and involved a school district employee, a named student, and the requestor's child. Specifically, the requestor seeks:

1. All complaints filed with the school district against the employee;
2. Any reports of disciplinary action involving the employee or any other school district teacher in 1991;
3. The names of complainants reporting abuse of their children during the 1990-1991 school terms;
4. Reports of disciplinary action involving the named student;
5. The names of any complainants complaining of the conduct of the named student;
6. All information relating to the incident of January 30, 1992.

7. The personnel file the employee and the school district superintendent

You advise us that the personnel files of the school district employee and the superintendent will be made available to the requestor.¹ You have submitted to us for review two memorandums relating to the incident of January 30, 1992, two memorandums detailing other incidents of employee misconduct, and records of the named student's conduct. You claim that this information is excepted from required public disclosure by sections 3(a)(11), 3(a)(14) and 14(e) of the Open Records Act.

Section 7(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. We note that the school district received the first request for information under the Open Records Act on February 19, 1992, and failed to request a decision within the ten days required by section 7(a) of the act. The school district requested a decision from this office on March 20, 1992. When a governmental body fails to request a

¹The Open Records Act prohibits governmental entities from releasing confidential information. See V.T.C.S. art. 6252-17a, § 10(a). You have not submitted to us for review the two personnel files requested; consequently, we do not consider whether any of the information contained therein must be withheld from required public disclosure under sections 3(a)(1) and 3(a)(2) of the Open Records Act. Section 3(a)(1) excepts from required public disclosure information made confidential by law. Section 3(a)(2) protects personnel file information if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). See also *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision No. 441 (1986). Under *Industrial Foundation*, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Section 3(a)(2) also expressly protects "transcripts from institutions of higher education maintained in the personnel files of professional public school employees." V.T.C.S. art. 6252-17a, § 3(a)(2); see generally Open Records Decision Nos. 545 (1990); 455 (1987). Governmental bodies that hold such transcripts from institutions of higher education in the personnel files of professional school employees must edit from the transcripts all information other than the employee's name, the courses taken, and the degree(s) obtained. Open Records Decision No. 526 (1989). The remainder of the transcript is protected from required public disclosure under section 3(a)(2).

decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977).

You assert that some of the requested information is excepted by sections 3(a)(14) and 14(e). Section 14(e) incorporates another source of law, specifically, the requirements of the Family Educational Rights and Privacy Act (FERPA), into the Open Records Act, providing:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

V.T.C.S. art. 6252-17a, § 14(e). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)...) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A). Section 1232g(a)(1)(A) states in part:

If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.

Id. § 1232g(a)(1)(A).

We have examined the documents submitted to us for review and conclude that the two memorandums relating to the incident of January 30, 1992, one of the memorandums detailing other incidents of employee misconduct, and the records of the named student's conduct contain information directly related to students and are thus "education records" as delineated by FERPA. We do not understand any of FERPA's exceptions to the definition of "education records" or to the confidentiality requirement for "directory information" to apply here. *See* 20 U.S.C. § 1232g(a)(4)(B), (a)(5); Open Records Decision No. 431 (1985) (copy enclosed). We note, however, that the requestor is the parent of one of the students to whom the requested information relates. In that case, this information may be released to the extent that it relates to the requestor's child. *Id.* § 1232g(a)(1)(A), (b)(1)(H). Otherwise, this information must be withheld from required public disclosure under sections 3(a)(14) and 14(e) of the Open Records Act. The memorandum dated February 12, 1992, detailing employee misconduct, however, contains no information directly related to a student. Accordingly, we conclude that it is not an "education record" as delineated by FERPA and thus not excepted from required public disclosure by sections 3(a)(14) and 14(e).

You also claim that the memorandum of February 12, 1992, is protected from required public disclosure by section 3(a)(11). As you have not made a compelling showing that this information is excepted from disclosure by statute or common law or that third party interests are at stake, the memorandum may not be withheld under section 3(a)(11) and must be made available to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-179.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/mc

Ref.: ID# 15394
ID# 15492
ID# 15487

cc: Mrs. Cathy E. Black
2813 6th Avenue North
Texas City, Texas 77590